

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

13-CV-4741 (LDH) (ARL)

-against-

CEANA, INC., and AUSTIN AZZARETTO

Defendants.

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LASHANN DEARCY HALL, United States District Judge:

On December 22, 2016, United States Magistrate Judge Arlene R. Lindsay issued a report and recommendation (the “Report and Recommendation”) (ECF No. 21), which recommended that Plaintiff United States of America’s motion for damages be granted in the amount of \$715,934.81, together with pre-judgment interest in the amount of \$111,719.40. Any written objections to the Report and Recommendation had to be filed with the Clerk of Court within fourteen (14) days of the date of service of the report. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). No objections were filed. Where no objections to a report and recommendation have been filed, “the district court need only satisfy itself that there is no clear error on the face of the record.” *Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd.*, 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (quoting *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001)) (internal quotation marks and citations omitted). The Court has reviewed the Report and Recommendation and finds no clear error.

By letter dated August 25, 2017, Plaintiff wrote to this Court requesting that, should the Court adopt Judge Lindsay’s recommendation, it modify the interest awarded to reflect interest

accrued since the entry of the Report and Recommendation. (*See* Pl.’s Aug. 25, 2017 Letter to the Court, ECF No. 22.) Specifically, Plaintiff requests an additional \$98,546.26 in interest purportedly accrued as of July 25, 2017. (*Id.*) The Court agrees that additional interest is warranted. However, the amount requested by Plaintiff is not supported by the record. In support of its motion for damages, Plaintiff submitted a declaration which provided that the principal balance remaining on the note at issue was \$715,934.81. (*See* Decl. of Celeste Kaptur ¶ 12, ECF No. 18-1.) Plaintiff further declared that the interest rate on the note was 4.365 percent per annum, which, on a principal of \$715,934.81, amounts to “\$31,250 per year or \$85.62 per day.” (*Id.* ¶ 15.) Plaintiff also declared that based on its calculation, as of the date of the declaration, it was entitled to \$111,719.40—the amount awarded by Judge Lindsay. (*Id.* ¶ 17.)

A total of 215 days elapsed between Judge Lindsay’s December 22, 2016 Report and Recommendation and July 25, 2017, the date Plaintiff refers to in its August 25, 2017 letter request. Based on Plaintiff’s representations, at \$85.62 per day, Plaintiff is entitled to only an additional \$18,408.30 through that date. The Court will also award Plaintiff pre-judgment interest from July 25, 2017 through the date of this Order in the amount of \$7,877.04. Together with the interest previously awarded by Judge Lindsay, Plaintiff is entitled to prejudgment interest in the total amount of \$138,004.74, and the Report and Recommendation shall be modified accordingly.

The Court hereby adopts Magistrate Judge Lindsay's Report and Recommendation, as modified above, as the opinion of this Court. Plaintiff's motion for damages is hereby granted and judgment should be entered against Defendants Ceana, Inc. and Austin Azzaretto in the following amounts: (1) damages in the amount of \$715,934.81; and (2) pre-judgment interest in the amount of \$138,004.74. The Clerk of Court is directed to enter judgment and close this case.

Dated: October 24, 2017
Brooklyn, New York

SO ORDERED:

/s/ LDH
LASHANN DEARCY HALL
United States District Judge